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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,867	02/09/2004	Andry Lagsdin	S1174/7029	7229
7590	02/28/2006		EXAMINER	
David M. Driscoll 1201 Canton Avenue Milton, MA 02186				BOEHLER, ANNE MARIE M
		ART UNIT	PAPER NUMBER	3611

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/773,867	LAGSDIN, ANDRY
	Examiner	Art Unit
	Anne Marie M. Boehler	3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 07 December 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 10-39 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 10-39 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 10-17, and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Mitchell (USPN 3,721,458).

Mitchell discloses an apparatus having all elements as claimed, including a unitary resilient pad (25) which is adapted to be in a downwardly facing orientation for ground engagement; a plurality of support posts (26) extending from said resilient pad at spaced intervals and engageable (capable of engagement) with an accommodating slot of a weldment (the weldment not being part of the claimed combination) and at least one securing member (27) that is connectable between said resilient pad and said weldment for holding said resilient pad to said weldment, the support posts extending from opposite sides of the pad (See Fig. 2), and are paced along opposite sides along a linear locus. Note that by virtue of the “capable: language in claim 10, the “accommodating slot” of the weldment has not been positively recited, but rather the support posts are capable of engaging such a slot. Also, claim 15, as presently claimed, need only includes an “area” on one side of the pad that is greater than on the other. Mitchell shows, in Figure 3, head 26 of a support member that has a greater area than the bolt on the opposite side of the pad 25.

3. Claims 21-23, 34, 35, 37, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Frank (USPN 4,421,290).

Frank discloses a pad having all of the elements as claimed, including a resilient pad member (8) having opposite ground engaging surfaces, one of which is adapted to be in a downwardly facing orientation for ground engagement, and having opposite support surfaces; and a plurality of mounting lugs, ends of support rods, including one lug set extending from one support surface side of the resilient pad members for releasable engagement with a corresponding slot set (see Figs. 88 and 9) of one support plate (54) of a weldment, and another lug set extending from an opposite support surface side of the resilient pad member for releasable engagement with a corresponding slot set of another support plate of the weldment, and wherein said resilient pad had a plurality of passages therethrough (See Fi. 9), each for receiving an elongated support member, the opposite free ends which form said support lugs, the support rod having a "roughened surface: (threaded end) as recited in claim 28.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 18-20 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frank.

Frank discloses a pad having all elements claimed, except for specifically reciting that the support rods are force fit into the accommodating holes or that they are

permanently affixed with the pad member. The product-by-process limitation, of force-fitting, does not define over the assembly of Frank, in that "even though product by process claims are limited by and defined by the process, determination of the patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). In the present case, press fitting the support rods in the pad would have been obvious to provide a tight secure fit. It would also have been obvious to permanently affix the support members in the resilient pad, in order to prevent loss or detachment of the support members.

6. Claims 24, 25, 33, 36, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Frank in view of Mitchell.

Frank discloses the claimed pad except that it is silent regarding forming the pad that is laminated or molded.

Mitchell discloses that it is known in the art to provide a laminated support pad having a plurality of resilient pad layers interengaged by support rods to form a unitary resilient pad.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the support structure of Frank with a laminated pad as taught by Mitchell in order to provide a tough and resilient pad structure that may be easily manufactured and that may reliably support heavy loads. Regarding the use of a

molded pad, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a molded pad as claimed, since it has been held to be within the general skill level of a worker in the art to select a known material on the basis of suitability for the intended use as a matter of obvious design choice (In re Leshin, 125 USPQ 416).

7. Applicant's arguments filed December 7, 2005, have been fully considered but they are not persuasive.

Applicant argues that the claim amendment, in claim 10, changing "adapted for" to "engageable" patentably distinguishes over the prior art of record. The examiner disagrees. In both cases, the claim language merely recites structure that is capable of engagement with a slot. Applicant is still carefully avoiding claiming the support weldment that contains the slots. Therefore, the prior art that shows the support posts that are capable of the recited function anticipate the claimed invention.

Applicant indicates that claim 15 is now in condition for allowance because it corresponds to the subject matter of claim 15 indicated as being allowable in the prior office action. The examiner disagrees. Applicant's current claim 15 is broader than the original because applicant has claimed "or area". The "area" has not been clearly defined and is taken in its broadest reasonable sense is anticipated by the prior art of record.

Applicant indicates that claiming the lugs to be "permanently affixed" with the pad member patentably defines over the prior art of record. The examiner disagrees. Permanently affixing or making integral structure that is fixedly attached is not a

patentable distinction unless doing so interferes with the normal operation of the invention. In the present case, Frank shows the embodiment of Figure 5, which includes support lugs 15 that can be permanently affixed to the pad because plates 13, 14, are detachably connected at each end, so that the lugs may remain with the pad even when it is moved between its two orientations.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne Marie M. Boehler whose telephone number is 571-272-6641. The examiner can normally be reached on 7:30-5:00, Monday-Thursday, and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6612. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

amb 2/20/06
Anne Marie M. Boehler
Primary Examiner
Art Unit 3611

amb